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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/535,150	05/16/2005	Hubert Rudolf Griengl	4301-1136	1804
466 7590 07/25/2007 YOUNG & THOMPSON 745 SOUTH 23RD STREET 2ND FLOOR ARLINGTON, VA 22202			EXAMINER MCDUFFIE, MICHAEL D	
			ART UNIT 3632	PAPER NUMBER
			MAIL DATE 07/25/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/535,150

Applicant(s)

GRIENGL, HUBERT RUDOLF

Examiner

Michael McDuffie

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,3-5,7-11,13-17 and 19-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,5,7-11,13-17 and 19-21 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

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This correspondence is in response to applicant's reply filed on 05/18/2007. Claims 1,3-5,7-11,13-17 and 19-21 are pending.

### DETAILED ACTION

#### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 3, 7-11, 13-17, and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Padin (U.S. Patent No.: 4850564) in view of Vargo (U.S. Patent No.: 5369925).

Regarding claim 1, Padin discloses a post for articles such as parasols, road signs, advertising signs, a rotary clothes drier, with a top part **20** holding a shaft of the article and a bottom part **42** facing the ground, characterized by a central connecting element **62** which is located in the area of the bottom part **42** and which can be positively joined a mount **60** which is anchored securely in the ground, the central

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connecting element **62** comprises a screw (as shown in Fig. 2) and the mount **60** comprises an anchor, the top part **20** comprises a pipe and the bottom part **42** comprises a plate which is connected to the pipe **20** in the manner of a flange, the bottom part is capable of being welded, to the top part **21**. The Examiner notes that the welded limitation is a manufacturing process used to obtain the desired product. The components of Padin are capable of being welded, and providing the same function.

Regarding claim 1, Padin is discussed above, and fails to teach an elastic layer. Vargo teaches a post, where there is an elastic layer **70** the ground plate **45-48** on the side facing the ground.

Regarding claim 3, Padin goes on to teach the post, where the central connecting element **62** and the mount **60** form a screw thread-quick release coupling.

Regarding 7, Padin discloses the post, where the pipe **20** is open on its end facing the mount **60** and wherein the connecting element **62** on this end is attached to the pipe **20**.

With regards to claim 8, Padin goes on to teach the post, where a holding part **21** for the connecting element **62** is mounted in the pipe **20**.

Regarding claim 9, Padin teaches the post, where the holding part **21** consists of a receiving part through which the connecting element **62** extends, and a fixing part (see threads) with which the connecting element **62** is held in the receiving part.

With regards to claim 10, Padin discloses the post, where the receiving part and the fixing part are screwed to one another (see Fig. 1).

Regarding claim 11, Padin further teaches the post, where the fixing part has a centering opening (as shown in Fig. 2).

Regarding claim 13, Padin goes on to teach the post, where the bottom part **42** is formed by an essentially all-over ground plate which is permanently joined to the top part **20**.

With regards to claim 14, Padin teaches the post, where the connecting element **62** is inserted through a hole **44** in the ground plate **42**.

Regarding claim 15, Padin further discloses the post, where the connecting element **62** is captively connected to the post.

With regards to claim 16, Padin discloses the post, where the connecting element **62** is a screw which is screwed into the ground plate and is optionally fixed there.

Regarding claim 17, Padin goes on to disclose the post, where the top part **20** in the area of its top end has a clamp device **23** for the shaft of the article.

Regarding claims 18-21, Padin is discussed above, and fails to teach an elastic layer. With regards to claim 18, Vargo teaches a post, where there is an elastic layer **70** the ground plate **45-48** on the side facing the ground.

Regarding claim 19, Vargo further teaches where the elastic layer **70** is a plate of rubber or the like.

With regards to claim 20, Vargo goes on to teach where the layer **70** is permanently joined to the bottom part (as shown in Fig. 3).

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Regarding claim 21, Vargo teaches where the layer **70** closely surrounds a central connecting element **18**.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention, to incorporate the elastic layer of Vargo with Padin's base member, in order to allow greater flexibility in elastic movement of the post protector when it is impacted by an object, as taught to be desirable by Vargo (see col. 4, lines 16-19).

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable in view of (Irwin et al. U.S. Pat. 6393795).

Padin is discussed above, and fails to teach a mount that consists of high-quality steel or aluminum. However, it is well known in the art to utilize metallic materials in the construction of anchors, for their strengthening properties.

#### ***Allowable Subject Matter***

Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

Applicant's arguments filed 05/18/2007 have been fully considered but they are not persuasive. The Applicant argues that the Padin reference fails to teach the limitations of claims 1, 2, 6, 12, and 18, specifically the top part being welded to the bottom part. This issue is addressed in the rejections above. In addition, the Applicant states that the Padin reference is designed for soft ground. However, a recitation of the

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intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Regarding the reference to Vargo, the Applicant states that the art is not relevant. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation can be found in col. 4, lines 16-19 of the Vargo reference, as noted above.

### **Conclusion**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael McDuffie whose telephone number is 571-272-3832. The examiner can normally be reached on Mon.-Fri., 7AM-3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*mm*

Michael McDuffie  
19-Jul-07

  
Carl D. Friedman  
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